

REMARKS

Claims 1-14 have been examined. Claim 1 has been amended. Reconsideration of the claims, as amended, is respectfully requested.

Priority Document

In reviewing the Office Action, Counsel for Applicants noted that no acknowledgement of the priority claim has been given. In reviewing our file, we note that we received a return postcard stamped January 28, 2002 acknowledging receipt of the certified copy of the priority document by the mail room. Counsel respectfully requests that the Examiner provide an acknowledgement of the receipt of the priority document in the next office action.

Claim Rejections - 35 U.S.C. §112

Claim 4 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. More specifically, claim 4 was rejected for use of the term "two tabs." This rejection is respectfully traversed.

As currently pending, claim 4 recites that the part comprises two tabs. One example of two tabs that may be found in the specification is the two longitudinal parts 13 that are separated by slits 14 (see Fig. 1). As such, the language found in claim 4, i.e., that the part comprises two tabs, should be clear, especially in view of the description provided in the specification. Hence, it is respectfully requested that this rejection be withdrawn.

Claim Rejections - 35 U.S.C. §102

Claim 1-8, 10, 11, 13 and 14 have been rejected under 35 U.S.C. §102(b) as being anticipated by Borkenstein. This rejection is respectfully traversed in part and overcome in part.

As now amended, independent claim 1 claims a holding device for holding a solid in a tube. The holding device comprises a filter having an elastically deformable part that is coupled to a disk such that the deformable part is transverse to the disk. A spring presses the elastically deformable part against the walls of the tube. Hence, an important feature of the holding device of claim 1 is that it includes a filter that comprises both an elastically deformable part and a disk that is transverse to the deformable part. Further, a spring is employed to press the elastically deformable part against the walls of the tube.

In contrast to the holding device of claim 1, the Borkenstein patent describes an alcohol retainer cartridge that is far different. More specifically, assuming element 16 is a disk as characterized in the Office Action, this disk 16 is not part of the filter (which the Office Action characterizes as element 18). Rather, as recited in the Borkenstein patent, the filter paper 18 is merely placed against disk 16 and is not part of the filter (see column 3, lines 27-28).

A further difference is that the filter of the Borkenstein patent is constructed of filter paper and therefore does not have any elastically deformable part as with the filter of claim 1. Still further, claim 1 of the present invention requires that the spring presses the elastically deformable part against the walls of the tube. In contrast, the Borkenstein patent discloses a clip that bears directly against the interior wall of the tube, but does not press an elastically deformable part of the filter against the walls of the tube. Hence, claim 1 is distinguishable over the Borkenstein patent for this additional reason.

Because the Borkenstein patent fails to describe several important limitations of claim 1, claim 1 as now amended is distinguishable over the Borkenstein patent. It is therefore respectfully requested that the §102 rejection of independent claim 1 be withdrawn. Claims 2-8, 10 and 11 depend from claim 1 and are distinguishable over the Borkenstein patent for at least the reasons recited in connection with claim 1.

As presently pending, independent claim 13 claims a test kit that comprises a tube and two holding devices that each comprise a filter having an elastically deformable part transverse to a disk and a spring pressing the elastically deformable part against the walls of the tube. Further, a reactant is placed between the ends of the holding devices.

In contrast, the Borkenstein patent fails to describe a filter having an elastically deformable part that is transverse to a disk as previously recited in connection with claim 1. Further, the Borkenstein patent fails to describe a spring that presses the elastically deformable part of each filter against the walls of the tube. As previously described in connection with claim 1, the clip of the Borkenstein patent bears directly against the interior wall of the tube. Further, as illustrated in Fig. 1 of the Borkenstein patent, only one clip is used with one of the paper filters, while the other filter includes no such clip. Hence, claim 13 is distinguishable over the Borkenstein patent for this additional reason.

Thus, the test kit of claim 13 differs from the Borkenstein device in a variety of ways. It is therefore respectfully requested that the §102 rejection of claim 13 be withdrawn.

Independent claim 14 claims a method of assembling a test kit and utilizes a first holding device that comprises a filter having an elastically deformable part that is transverse to the disk. Further, a spring presses the elastically deformable part against the walls of the tube. As previously described in connection with claim 13 and claim 1, the Borkenstein patent fails to describe such a first holding device. Further, claim 14 requires the introduction of a reactant into the tube and the introduction of a second holding device into the tube. As illustrated in Fig. 1 of the Borkenstein patent, the first filter paper that is placed into the tube does not have a spring to hold it in place. Hence, claim 14 is distinguishable over the Borkenstein patent for at least this additional reason. It is therefore respectfully requested that the §102 rejection of claim 14 in view of the Borkenstein patent be withdrawn.

Claim Rejections - 35 U.S.C. §103

Claims 6, 9 and 11 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Borkenstein in view of Paul. Claims 6, 9 and 11 depend from claim 1 and are distinguishable over the Borkenstein patent for at least the reasons previously described. Because the Paul patent also fails to teach or suggest such limitations, claims 6, 9 and 11 are distinguishable and in condition for allowance.

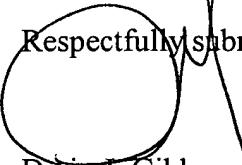
Appl. No. 10/042,615
Amdt. dated November 23, 2004
Reply to Office Action of September 10, 2004

PATENT

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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